

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TODD REED,

Plaintiff,

v.

No. 1:23-cv-00589-LF

NEW MEXICO SPORTS AND WELLNESS,

Defendant.

**MEMORANDUM OPINION AND ORDER
TO CURE DEFICIENCY AND TO FILE AN AMENDED COMPLAINT**

THIS MATTER comes before the Court on *pro se* Plaintiff's Complaint for Disability Discrimination and Negligence, Doc. 1, filed July 13, 2023 ("Complaint") and Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form), Doc. 2, filed July 13, 2023.

Order to Cure Deficiency

Plaintiff filed a motion to proceed *in forma pauperis* using the form "Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)." *See* Doc. 2, filed July 13, 2023 ("Short Form Application"). The Short Form Application does not provide sufficient information for the Court to determine whether a plaintiff is unable to pay the required fees. The Court requires plaintiffs seeking to proceed without prepaying fees to file an "Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form)" ("Long Form Application"). Failure to file a Long Form Application within twenty-one (21) days from

entry of this Order *or* failure to follow all instructions in the Long Form Application may result in denial of the motion to proceed *in forma pauperis*.¹

Order for Amended Complaint

Plaintiff filed a 39-page Complaint with a four-page Affidavit in Support of Complaint. The Complaint contains two sections, one for the disability discrimination and retaliation claims and the other for a negligence claim. *See* Complaint at 1, 17. The disability discrimination and retaliation section contains 124 numbered paragraphs. The negligence section contains numerous un-numbered paragraphs. The Court orders Plaintiff to file an amended complaint with all paragraphs numbered. *See* Fed. R. Civ. P. 10 (“A party must state its claims . . . in numbered paragraphs”).

The Complaint also contains many allegations that are not necessary to state a claim and redundant allegations. *See, for example*, Complaint ¶¶ 36-43, 47-48, 51, 73, at 19, 23-24, 30-32 (advising the Court of legal standards, asserting legal arguments); at 6, ¶ 44 (“defendant is a place of public accommodation”), at 12, ¶ 84 (“defendant is a covered entity and place of public accommodation”), at 14, ¶ (“defendant, a public accommodation”), at 19 (“defendant was a public accommodation”); Fed. R. Civ. P. 12(f) (“The court may strike from a pleading any redundant, immaterial, impertinent, or scandalous matter”). Rule 8(a) requires that a complaint set out a short, plain statement of the claims showing that the pleader is entitled to relief. *See Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007) (“[T]o state a claim in federal court, a complaint must explain what each defendant did to

¹ The Court previously notified Plaintiff that the Short Form Application does not provide sufficient information for the Court to determine whether a plaintiff is unable to pay the required fees and that the Court requires plaintiffs seeking to proceed without prepaying fees to file a Long Form Application. *See* Order to Cure Deficiency, Doc. 5, filed January 3, 2023, in *Reed V. Albuquerque Public Schools*, No. 1:22-cv-00985-MIS-KK.

him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.""). Plaintiff's amended complaint must comply with the Federal Rules of Civil Procedure and the District of New Mexico's Local Rules of Civil Procedure.

Case Management

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys. It is a *pro se* litigant's responsibility to become familiar with and to comply with the *Federal Rules of Civil Procedure* and the *Local Rules of the United States District Court for the District of New Mexico* (the "Local Rules").

Guide for Pro Se Litigants at 4, United States District Court, District of New Mexico (October 2022). The Local Rules, the Guide for Pro Se Litigants and a link to the Federal Rules of Civil Procedure are available on the Court's website: <http://www.nmd.uscourts.gov>.

Compliance with Rule 11

The Court reminds Plaintiff of his obligations pursuant to Rule 11 of the Federal Rules of Civil Procedure. *See Yang v. Archuleta*, 525 F.3d 925, 927 n. 1 (10th Cir. 2008) ("*Pro se* status does not excuse the obligation of any litigant to comply with the fundamental requirements of the Federal Rules of Civil and Appellate Procedure."). Rule 11(b) provides:

Representations to the Court. By presenting to the court a pleading, written motion, or other paper--whether by signing, filing, submitting, or later advocating it--an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

Fed. R. Civ. P. 11(b). Failure to comply with the requirements of Rule 11 may subject Plaintiff to sanctions, including monetary penalties and nonmonetary directives. *See* Fed. R. Civ. P. 11(c); *see also Olsen v. Mapes*, 333 F.3d 1199, 1204 (10th Cir. 2003) (“Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss an action with prejudice if the plaintiff fails to comply with [the Federal Rules of Civil Procedure] or any order of court”).

IT IS ORDERED that:

- (i) Plaintiff shall file an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) within twenty-one (21) days from entry of this order. Failure to timely file a Long Form Application may result in denial of Plaintiff’s motion to proceed without prepaying fees or costs.
- (ii) The Clerk shall send to Plaintiff a copy of this Order and an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form).
- (iii) Plaintiff shall, within 21 days of entry of this Order, file an amended complaint. Failure to timely file an amended complaint may result in dismissal of this case.


UNITED STATES MAGISTRATE JUDGE